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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,767	12/03/2003	Margaret Marie Nixon	AQMED.0103	4214
22858	7590	01/09/2006	EXAMINER	
CARSTENS & CAHOON, LLP P O BOX 802334 DALLAS, TX 75380			MENDOZA, MICHAEL G	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/726,767	Applicant(s) NIXON, MARGARET MARIE	
	Examiner Michael G. Mendoza	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection. The Applicant has amended independent claim 1 to include the new limitation of wherein the attaching means and holding means are collinear. That newly added limitation changes the scope of the claim requiring new consideration and an updated search. A new ground(s) of rejection is made in view of Skakoon 5232193.
2. In response to the Applicant's argument that Lock fails to generally disclose a tensor for a surgical tape, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The Applicant argues that the Examiner that the limitations are not pointed out. The Examiner disagrees. The figure following the rejection points out the structural limitations of the claim. The functional limitations of "a surgical tape of a given size can frictionally move through the first opening" and "restrainably engage the surgical tape of a give size" does not result in a structural difference between the claimed invention and the prior art.
3. In response to the Applicant's argument that Skakoon does not teach any step involving a length of surgical tape. The Examiner disagrees. The specification of the instant application discloses the surgical tape being a tube. On page 2, lines 27-28, the tape is described as being a silicone tube. The tape as defined by the specification is a

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tube, therefore the method of Skakoon anticipates the claim limitation. The Applicant also argues that the method of the instant application is used to prevent the flow of fluid through elongated anatomical structures. Claims 11-13 do not disclose any method steps involving securing the surgical tape to any anatomical structures. In response to the Applicant's arguments, the recitation "A method of clamping an elongated anatomical structure, such as a blood vessel" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Drawings

4. The drawings were received on 17 October 2005. These drawings are accepted by the examiner.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1, 3-5 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Skakoon 5232193.

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7. As to claims 1 and 3-5, Skakoon teaches a tensioner body, the tensioner body having attachment means; holding means; wherein the attaching means and the holding means are collinear; wherein the attaching means comprises an elongated slot through the tensioner body; wherein the holding means comprises a circular opening through the tensioner body; wherein the holding means comprises an elongated slot through the tensioner body.

8. Main Entry: **¹slot**  (<http://www.m-w.com/cgi-bin/dictionary>)

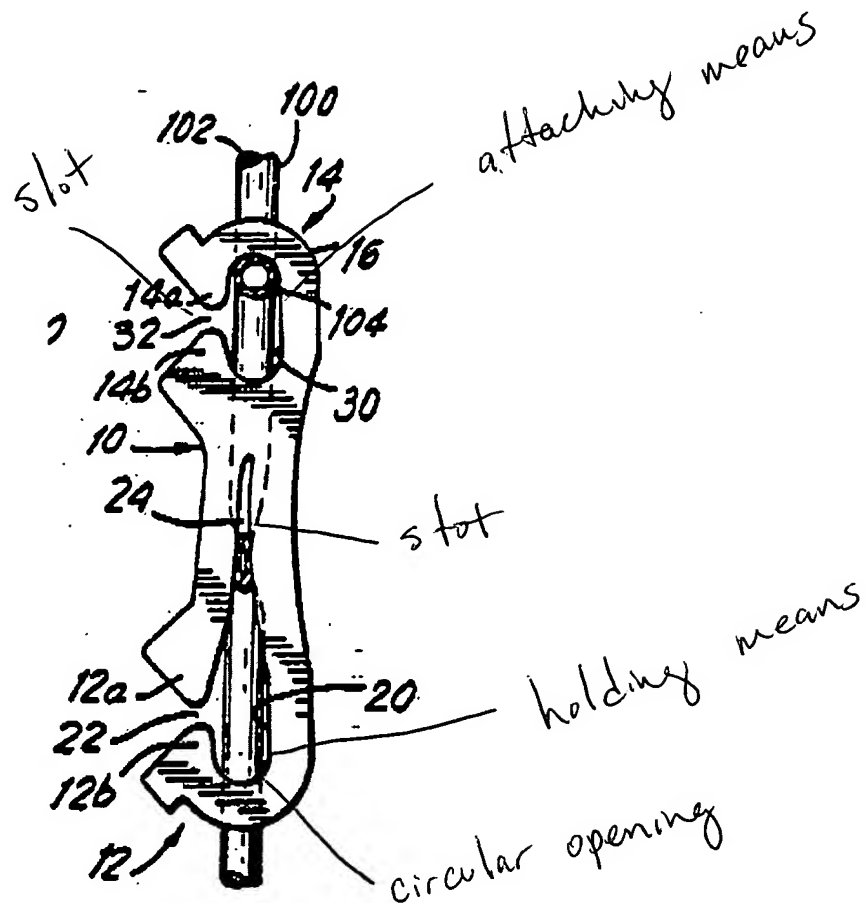
Pronunciation: 'slät

Function: *noun*

Etymology: Middle English, the hollow running down the middle of the breast, from Middle French *esclot*

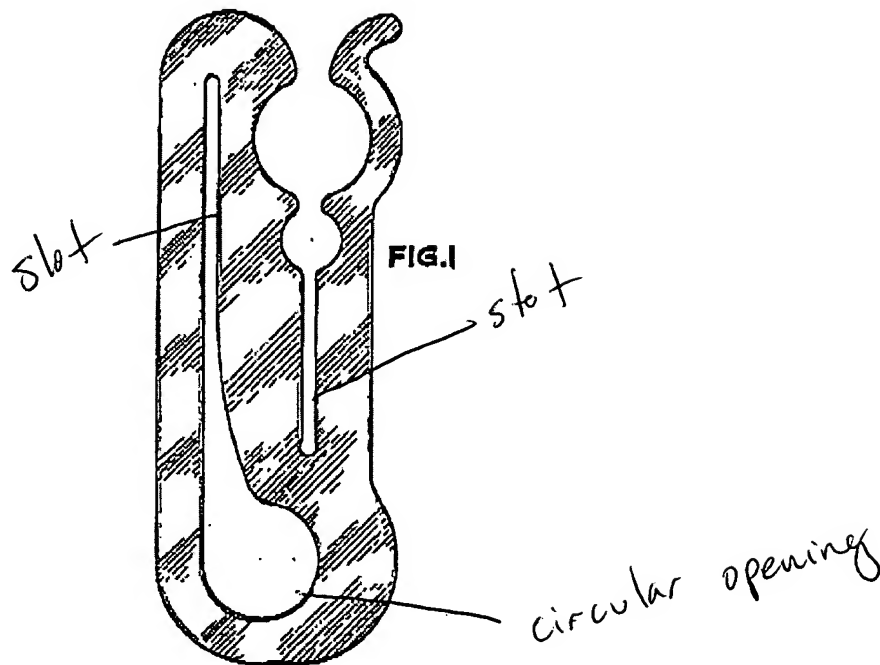
1 a : a narrow opening or groove

9. As to claims 11-13, Skakoon teaches a method of clamping, the method comprising the steps of: attaching a tension, having a body, to a length of surgical tape; passing a portion of the surgical tape around the elongated body structure; and securing the surgical tape in place by inserting a section of the surgical tape into a gripping portion of the tensioner; wherein the attaching step comprises securing a free end of the length of surgical tape in a slot in the tensioner; wherein the securing step comprises threading the length of surgical tape through an opening in the tensioner.

**FIG. 4**

10. Claims 6 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lock Des. 233312.

11. Lock teaches a tensioner for a surgical tape, the tensioner comprising a tensioner body having a first opening and a second opening passing therethrough; wherein the first section of the first opening has a circular cross-section; wherein the second section of the first opening is an elongated slot; and wherein the second opening is an elongated slot (see fig.).



Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lock.

14. Lock teaches the tensioner of claims 1 and 6. It should be noted that Lock fails to teach wherein the tensioner is formed of plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tensioner of Lock out of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a

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matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Also it is common knowledge to those of ordinary skill to choose a material that has sufficient strength for the intended use of that material. Furthermore, it is well known in the art of surgical clips/clamps to use plastic. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use plastic to form the tensioner because it is inexpensive and its rigid, long lasting characteristics.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contacts


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-44963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MM


GLENN K. DAWSON
PRIMARY EXAMINER